Filed 2/11/04 P. v. 1997 Toyota 4-Runner CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Appellant,

v.

1997 TOYOTA 4-RUNNER, CAL. LIC. #3WTT863, VIN JT3GN87R1V0051277,

Defendant;

TONY G. CERVANTES et al.,

Defendants and Respondents.

F042241

(Super. Ct. No. 244488)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Theresa A. Goldner, Commissioner.

Edward R. Jagels, District Attorney, and Steven M. Katz, Deputy District Attorney, for Plaintiff and Appellant.

Frank Butkiewicz for Defendants and Respondents.

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STATEMENT OF THE CASE

On June 13, 2001, Marie A. Frausto filed a verified claim in superior court opposing forfeiture of a certain 1997 Toyota 4-Runner Limited Sport vehicle (California license number 3WTT863). Frausto alleged she was the owner of the vehicle and had a

vested interest in the vehicle because she had paid $37,969 to Tony G. and Juanita C. Cervantes for the vehicle.

On July 3, 2001, appellant filed a petition for forfeiture in Kern County Superior Court. Appellant named respondents Tony G. and Juanita C. Cervantes as real parties in interest, sought forfeiture of the 1997 Toyota 4-Runner, California license number 3WTT863, vehicle identification number JT3GN87R1V0051277, and alleged, among other things, the subject vehicle was furnished or intended to be furnished in exchange for a controlled substance or was the proceeds traceable to such an exchange.

On October 22, 2001, appellant filed a motion to strike the claim of real parties in interest for lack of standing "as they were merely nominal owners of defendant 1997 Toyota 4-Runner and did not exercise the requisite dominion and control over the vehicle to qualify as the true owners on the date of the seizure." On the same date, appellant filed a list of exhibits in support of the motion.

On October 29, 2001, respondents filed written opposition to appellant's motion to strike as well as a separate list of exhibits.

On November 14, 2001, the court conducted a contested hearing on the motion to strike.

On December 26, 2001, Theresa A. Goldner, commissioner of the superior court, found respondents had an equitable interest in the vehicle sought to be forfeited and denied appellant's motion to strike for lack of standing.

On August 19, 2002, appellant filed a motion for summary judgment or, in the alternative, for summary adjudication of issues. (Code Civ. Proc., § 437c.)

On August 30, 2002, respondents filed written opposition to the motion for summary judgment.

On September 11, 2002, appellant filed a written response to respondent's separate statement of undisputed facts and a written reply to appellant's opposition papers.

On September 16, 2002, the court conducted a contested hearing on the motion for summary judgment.

On October 28, 2002, the case proceeded to jury trial.

On October 30, 2002, appellant filed a motion for directed verdict on the ground respondents did not have a valid ownership interest in the subject property or were "'straw'" or "'nominal'" owners of the property or had an unsecured interest in the property and thus did not have standing to contest the forfeiture. (Code Civ. Proc., § 630.)

On October 31, 2002, the court filed a formal order finding triable issues of material fact and denying appellant's motion for summary judgment or, in the alternative, summary adjudication of issues.

On November 1, 2002, the jury returned a special verdict finding the respondents: (1) were not "'straw'" or "'nominal'" owners of the Toyota 4-Runner; (2) did not have an unsecured interest in the Toyota 4-Runner; (3) had a valid ownership interest in the Toyota 4-Runner; and (4) had a 100 percent ownership interest in the Toyota 4-Runner.

On November 1, 2002, the court filed a judgment on verdict in open court.

On November 19, 2002, appellant filed a motion for judgment notwithstanding the verdict "on the ground that the evidence received at trial is insufficient as a matter of law to support the jury's verdict."

On November 26, 2002, respondents filed written opposition to the motion for judgment notwithstanding the verdict.

On December 30, 2002, appellant filed a timely notice of appeal from the judgment on special verdict.[1]

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[1] In the opening brief on appeal, appellant contends it is appealing "the trial court's denial of the People's Motion for a Directed Verdict and the People's Motion for Judgment Notwithstanding the Verdict after jury trial on a narcotics asset forfeiture petition."

On January 2, 2003, the court conducted a contested hearing on the motion for judgment notwithstanding the verdict and took the matter under submission.[2]

STATEMENT OF FACTS

On August 19, 1997, William and Marie Frausto went to a Bakersfield Toyota dealership to purchase a new Toyota 4-Runner (4-Runner). William and Marie had been together for 18 years, had several children together, and were to be wed four days later. William and Marie had already picked out a 4-Runner before going to the dealership. They put down $9,000 in cash toward the purchase of the 4-Runner. The down payment consisted of $3,500 from Marie's income tax refund, $200 of William's gate money upon his release from prison, monies Marie had earned, and a monetary wedding gift that respondents—Marie's father and stepmother—had given the couple.

The couple had to finance the balance of the purchase price but could not qualify for an automobile loan because of poor credit. When Marie learned she could qualify

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Although appellant cites to Code of Civil Procedure section 904.1, subdivision (a)(4) as authorizing this appeal, that provision only applies to an appeal "[f]rom an order granting a new trial or denying a motion for judgment notwithstanding the verdict." (*Id.*, subd. (a)(4).) Appellant did not appeal from the order denying motion for judgment notwithstanding the verdict in the instant case. Nevertheless, the judgment upon special verdict appears appealable under the general provisions of Code of Civil Procedure section 904.1, subdivision (a) (an appeal may be taken from a judgment).

[2] The record on appeal contains appellant's moving papers for judgment notwithstanding the verdict and respondents' written opposition papers. Appellant claims the trial court denied its motion on April 3, 2003. However, appellant does not cite to and we cannot find any portion of the record on appeal to support this proposition. A judgment or order of the lower court is presumed correct and error must be affirmatively shown. A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed. (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) Because respondents readily acknowledge the trial court's denial of the motion for judgment notwithstanding the verdict, this court may address the substance of appellant's contention.

with a cosigner, she called her stepmother, Juanita Cervantes, and asked her to cosign the loan. However, even with Juanita's signature, the couple still did not qualify for a loan. Juanita then called her spouse (Marie's father), Tony Cervantes, to see if he would also cosign. Tony agreed but could not go to the dealership because he was at work. Juanita signed the contract and wrote Tony's signature on the motor vehicle contract and security agreement.

Marie Frausto and the respondents orally agreed that if Marie did not make the monthly payments on the 4-Runner, then the respondents would get the vehicle. Juanita said they reached this understanding either before or after the purchase of the 4-Runner. Juanita understood that Marie would have possession of the 4-Runner after the Toyota Motor Credit contact was signed. Marie considered herself the primary user of the 4-Runner and during the time she was paying off the vehicle, the vehicle was primarily hers.

At trial, Juanita first testified she telephoned Tony Cervantes and discussed the purchase of the 4-Runner before going to the dealership and signing her name and Tony's name to the contract. She later testified she may have had the conversation with Tony after learning she could not qualify for the loan without Tony as an additional cosigner. During that conversation, Tony told Juanita to let Marie know the 4-Runner would become the respondents' property if Marie failed to make the payments. To Juanita's knowledge, Tony never had a direct conversation with Marie about who was going to own the 4-Runner if the payments were not made. Tony said he never specifically communicated the terms of the agreement to Marie "because she knew more or less."

Juanita Cervantes testified the parties "didn't actually have [an] agreement." She said Marie just "knew" if she did not pay them, the 4-Runner would be the Cervanteses' property. Marie Frausto also testified she just "knew" if she did not pay, then the 4-Runner would go to respondents. The telephone call between Tony and Juanita Cervantes was the basis for the purported agreement. Before Juanita signed the contract,

the parties never had a written or verbal agreement. Moreover, after the date of purchase, they did not make any other agreements or put their agreement in writing. According to Juanita, they never even talked about the agreement after the date of purchase.

Marie and respondents understood that Marie would be the owner of the 4-Runner upon full payment of the loan. Marie was to pay the down payment, the monthly payment on the Toyota Motor Credit loan, the insurance, and the registration. However, the 4-Runner would belong to respondents until the loan was paid off. Respondents were the registered owners of the 4-Runner from the date of purchase through the date of the seizure. Marie possessed the 4-Runner the majority of that period of time and drove the car daily. Respondents used the vehicle whenever they wanted and this typically occurred three or four times a month. Marie intended to let respondents use the vehicle whenever they wanted, even if the loan was paid in full. Respondents kept a set of keys to the 4-Runner.

Marie paid for all of the obligations associated with the 4-Runner, including the monthly loan payment and the insurance payment. Marie gave Juanita cash to pay Toyota Motor Credit, the registration, and the vehicle insurance. Marie said Juanita had nothing to do with making the monthly loan payment other than providing notice of it to Marie. Juanita paid for the Department of Motor Vehicles (DMV) registration fees after the seizure in 2001. Juanita said she might have paid the fees for two years. After July 1998, Marie made the monthly payment to Juanita, who then gave the money to Antonia Cervantes (Tony's mother and Marie's grandmother).

In June 1998, William and Marie separated when William went back to prison. Marie could not make the monthly payment to Toyota Motor Credit for the 4-Runner. Despite her understanding with the respondents, Marie kept the vehicle when she failed to make the payments.

In August 1998, Tony asked his mother, Antonia, to take a mortgage on her home. Antonia did so and obtained $30,000 to pay off the Toyota Motor Credit contract.

Juanita then made payments to Antonia and Antonia in turn went to her credit union to make payments on the mortgage. Juanita said she and Tony were not liable on the Toyota Motor Credit contract after Antonia refinanced her house and paid off the loan.

In April 2001, Bakersfield Police Detective Joseph Aldana, a member of the department's Major Violators Section, began investigating William Frausto for trafficking in methamphetamine in Bakersfield and Kern County. On May 16, 2001, Bakersfield police arrested Frausto for possession of methamphetamine for sale and seized the Toyota 4-Runner. During their investigation, officers had seen William driving the 4-Runner on several occasions. When officers arrested Frausto, they found 1.99 pounds (more than 28.5 grams) of methamphetamine concealed in a golf bag inside the 4-Runner.[3]

In addition to the 1.99 pounds of methamphetamine in the golf bag, William Frausto had $4,000 in cash in his pocket. Frausto admitted that $1,500 of the money came from selling methamphetamine. Police officers found pay and owe sheets inside the center console of the 4-Runner and bills addressed to William Frausto at 913 Yale Avenue in Bakersfield. Officers later executed a search warrant at William and Marie's residence and found an empty container of MSM, a cutting agent for methamphetamine. They also found narcotics packaging materials and a heat sealer used to package narcotics. In addition, they found five more pay and owe sheets at the residence.

According to Detective Aldana, William sold methamphetamine for $400 to $800 an ounce. William also used the 4-Runner to facilitate his illegal narcotics sales. He

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[3] Under California law, the interest of a registered owner of a vehicle used to transport 28.5 grams or more of methamphetamine is subject to forfeiture. (Health & Saf. Code, § 11470, subd. (e).)

pleaded no contest to possession for sale of methamphetamine in Kern County Superior Court case No. BF095174.

Bakersfield Police Detective Orben Love was the officer who seized the 4-Runner for asset forfeiture on May 16, 2001. At the scene of the seizure, Marie initially told Detective Love the 4-Runner belonged to her. She then said the 4-Runner was hers but "technically" it belonged to respondents. Marie later changed her statement after Detective Love found documents bearing respondents' names. Marie then said only respondents owned the 4-Runner.

Two days later, police executed search warrants at 1101 and 1105 Wilson Road. These were the residences of Antonia Cervantes and respondents, respectively. Police had seen William go to these houses before his arrest. On that date, Juanita told Detective Love that William and Marie Frausto had sole possession of the 4-Runner after it was purchased. However, Juanita maintained she and Tony owned the 4-Runner.

Detective Love saw Juanita drive up in a yellow Geo Prism during the execution of the search warrants. After finding receipts listing the name "Juan A." in Juanita's cabinet, Detective Love asked Juanita if "Juan A." was one Juan Alonzo. Juanita said "Juan A." was a friend of William Frausto's who gave her payments. Juanita claimed she never actually spoke to "Juan A." Rather, he just came by and gave her money without any discussion.

Detective Love thought "Juan A." might be one Juan Alonzo, a drug dealer he had arrested in 1998. When he conducted a surveillance on Juan Alonzo, he saw him drive a black Geo Prism with the same license plate number as that on Juanita's Geo Prism. By reviewing his past reports, he confirmed this was the same vehicle that Juanita drove. Juanita did admit to Love that her Prism had been repainted. Love looked at his reports in the past case and linked Marie Frausto to Juan Alonzo. In 1998, police stopped Alonzo in a Chevrolet Impala and impounded the car because it had hidden

compartments. The car had two cellular telephones on the front seat and one of those phones belonged to Marie Frausto.

Detective Love testified that drug dealers typically try to conceal ownership of assets from law enforcement. He also testified that drug dealers often wish to distance themselves from their assets by getting individuals with a legitimate source of income to acquire assets for them. According to Love, this is known as "straw ownership." A dealer uses family members or business associates to distance himself or herself from the property. In many cases, the drug dealer does not tell the other party that he or she is putting the property in the other party's name to conceal true ownership.

The seized documents bore multiple addresses for William and Marie Frausto. These documents included telephone bills, cable bills, credit union statements, utility bills, tax documents, an insurance bill, and an automobile repair bill. According to Detective Love, these documents suggested that the Fraustos attempted to conceal their assets by not leaving a paper trail that would lead law enforcement to their correct address. In Love's view, Tony and Juanita Cervantes were straw owners of the 4-Runner and William and Marie Frausto were the true owners, even though they placed the vehicle in respondents' names.

Trial Stipulation

On October 28, 2002, the parties filed a stipulation in superior court, stating in relevant part:

> "THE PARTIES AND THEIR ATTORNEYS IN THIS MATTER STIPULATE AS FOLLOWS:
>
> "1. William Frausto used Defendant property as an instrument to facilitate the possession for sale, or sale, of 1.99 pounds (more than 28.5 grams) of methamphetamine.
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> "2. The Bakersfield Police Department lawfully seized Defendant property on May 16, 2001 when they arrested William Frausto for possession for sale of methamphetamine.

"3. William Frausto pled no contest to possession for sale of methamphetamine in ... the underlying or related criminal case number BF095174.

"4. Real Parties in Interest, Tony and Juanita Cervantes, did not have knowledge that Defendant property would be used as an instrument to facilitate the possession for sale, or sale, of methamphetamine.

"5. Real Parties in Interest, Tony and Juanita Cervantes, did not consent to the use of Defendant property for facilitation of the possession for sale, or sale, of methamphetamine."[4]

DISCUSSION

I.

MOTION FOR DIRECTED VERDICT

Appellant contends the trial court should have granted its motion for a directed verdict because the evidence showed that respondents did not have a valid ownership interest in the 4-Runner. Appellant specifically argues that respondents (a) did not actually possess the 4-Runner; (b) did not exercise sufficient dominion and control to make them owners of the 4-Runner; (c) were nominal title holders at most; and (d) never had a financial stake in the 4-Runner.

After all parties have completed the presentation of all of their evidence in a trial by jury, unless the court specifies an earlier time, any party may move for an order directing entry of a verdict in its favor. (Code Civ. Proc., § 630, subd. (a).) The court may grant the motion as to some of the issues and the action shall proceed on any remaining issues. (Code Civ. Proc., § 630, subd. (b).) The power of the court to direct a verdict is absolutely the same as the power of the court to grant a nonsuit. A motion for a

[4] Although the parties stipulated the respondents did not know or consent to William Frausto's use of the 4-Runner in illegal drug dealing, Detective Love said this was consistent with straw ownership. The detective emphasized that respondents' relationship to the 4-Runner was consistent with straw ownership.

directed verdict is in the nature of a demurrer to the evidence. (*Brassinga v. City of Mountain View* (1998) 66 Cal.App.4th 195, 210.)

A directed verdict may be granted only when the court determines there is no evidence of sufficient substantiality to support the claim or defense of the party opposing the motion or a verdict in favor of that party. In making that determination, the trial court must disregard conflicting evidence, give the evidence of the party against whom the motion is directed all the value to which it is legally entitled, and indulge in every legitimate inference from the evidence in favor of that party. If a party resisting a motion for directed verdict produces sufficient evidence to support a jury verdict in its favor, the motion must be denied. (*McMahon v. Albany Unified School Dist.* (2002) 104 Cal.App.4th 1275, 1282; *Bell v. State of California* (1998) 63 Cal.App.4th 919, 923.) Thus, where an honest difference of opinion between people of average intelligence can arise as to the effect of the evidence—that is, if the evidence is such that different conclusions upon the matter can rationally be drawn from the evidence—then the case presented is one for the jury as the trier of fact. (*Hatzakorzian v. Rucker-Fuller Desk Co.* (1925) 197 Cal. 82, 95.)

On appeal from the denial of a motion for directed verdict, an appellate court undertakes review "much like appellate review on a claim of insufficient evidence." (*Bell v. State of California, supra,* 63 Cal.App.4th at p. 927.) In undertaking such review, we consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving conflicts in favor of the judgment. We do not reweigh the evidence. Our authority begins and ends with a determination as to whether on the entire record, there is any substantial evidence, contradicted or uncontradicted, in support of the jury verdict. If we find there is no substantial evidence in support of the verdict, then we must conclude it was error for the trial court to deny the motion for directed verdict. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631.)

On October 30, 2002, appellant moved for directed verdict on the ground respondents did not have a valid ownership interest in the 4-Runner and/or were nominal owners of the 4-Runner and/or had an unsecured interest in the 4-Runner. Thus, appellant maintained respondents did not have standing to contest the forfeiture of the vehicle. On the same date, the court conducted a contested hearing on the motion outside the presence of the jury, heard the arguments of counsel, and denied the motion, stating in relevant part:

> "Motion for a directed verdict is a difficult motion to have granted, that's because it's similar to a motion for a non-suit. If there's any doubt whether the evidence is sufficient to sustain a challenged claim or a defense depending upon the case, the case law says that the motion should be denied.
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> "In evaluating a motion for a directed verdict, the Court has to concede the truth of the facts that have been proved and the Court is not allowed to waive [*sic*] credibility of the witnesses. The Court has to accept as true the evidence that has been submitted by the party opposing the motion.
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> "The issue in this case is whether the real parties in interest [respondents] have presented any substantial evidence to support a verdict in their favor, and in this particular instance, the issue is about ownership. Are they the true owners or are they only straw owners, and the cases ... say[] that ownership depends on a lot of different things. It's not just who is the title owner, who owns the pink slip.
>
> "[A]ctual ownership can be proven by actual possession, by dominion, by control, by title, and by financial stake. It's not just what does the paper look like, what does the title paper look like.
>
> "In this particular case, given the parameters of [Code of Civil Procedure] Section 630, I am unable to find that the real parties in interest have failed to present sufficient evidence to support a verdict in their favor. That's because I must accept as true without giving any evaluation to the credibility of the witnesses, the evidence that they have submitted."

Civil asset forfeiture is a process by which the government seizes property suspected of having a connection to illegal drugs or other criminal activities and then remits the proceeds to the law enforcement agencies that participated in the seizure.

(Comment, *Follow the Money: Getting to the Root of the Problem with Civil Asset Forfeiture in California* (2002) 90 Cal. L.Rev. 1635.) A forfeiture proceeding is a civil in rem action in which property is considered the defendant, on the fiction that the property is the guilty party. Statutes imposing forfeitures are disfavored and are to be strictly construed in favor of the persons against whom they are sought to be imposed. A claimant has both a statutory and a California constitutional right to a jury trial on civil in rem forfeiture proceedings. (*People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409, 418.)

California's drug forfeiture law has undergone numerous revisions since its enactment in 1972. The current law, as amended effective 1994, sets forth a comprehensive scheme governing forfeitures of controlled substances, property cash, and other things of value used in connection with the trade in controlled substances. The statutory scheme provides that currency and other things of value are subject to forfeiture if furnished or intended to be furnished in exchange for a controlled substance, traceable to such an exchange, or used or intended to be used to facilitate trafficking in, or the manufacture of, various controlled substances. (Health & Saf. Code, § 11470, subd. (f).) Property subject to forfeiture may be seized by a peace officer if there is probable cause to believe the property was used for the specified illicit purposes. (Health & Saf. Code, § 11471, subd. (d); *People v. Superior Court (Plascencia), supra,* 103 Cal.App.4th at pp. 418-419.)[5]

If the appropriate governmental agency determines, based upon the facts, that property valued over $25,000 is forfeitable, the Attorney General or district attorney must

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[5] Because the California drug asset forfeiture statutes are modeled on the federal forfeiture laws, federal case law is highly persuasive in deciding drug forfeiture issues, although not controlling. (*People v. $9,632.50 United States Currency* (1998) 64 Cal.App.4th 163, 169.)

file a petition of forfeiture in the superior court within specified time limits and must comply with various service and notice requirements. (Health & Saf. Code, § 11488.4.) Once a verified claim is filed, the claimant is entitled to a hearing by jury, at which the provisions of the Code of Civil Procedure generally apply. (Health & Saf. Code, § 11488.5, subds. (a), (c)(2), (3).) To obtain forfeiture, the government must show at the hearing that the owner of any interest in the seized property consented to use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted. (Health & Saf. Code, § 11488.5, subd. (d)(1)). The government must also show the property was so used. (Health & Saf. Code, § 11488.5, subd. (e); *People v. Superior Court (Plascencia), supra,* 103 Cal.App.4th at pp. 418-419.) With respect to other things of value, the government shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought and as to which forfeiture is contested meets the criteria for forfeiture described in Health and Safety Code section 11470, subdivision (f). (Health & Saf. Code, § 11488.4, subd. (i)(2).)

A claimant in a civil forfeiture proceeding must show he or she has a recognizable legal or equitable interest in the seized property to establish standing. California and federal courts considering the drug forfeiture laws have held that standing is a threshold legal issue. The claimant bears the burden of establishing an interest in the seized property sufficient to satisfy the court of his or her standing to contest forfeiture. Requiring proof by admissible evidence of a claimant's right to the property assures to some extent that such property will not be released to a person whose claim is spurious or contrived. A claimant must prove a legally cognizable interest by a preponderance of the evidence. Standing is a threshold question of law for the trial court where the matter can be determined on the undisputed facts. Where, however, the determination of a claimant's standing to challenge the government's forfeiture turns on disputed facts or credibility determinations, and the issue of the claimant's ownership and the merits of the forfeiture action are inextricably intertwined, the jury must make factual findings on the

issue of the claimant's ownership or interest in the seized property before the trial court decides whether the facts, as determined by the jury, confer standing as a matter of law. (*People v. Superior Court (Plascencia), supra,* 103 Cal.App.4th at pp. 423-424.)

To establish standing in a civil forfeiture action, the claimant must demonstrate a possessory or ownership interest in the subject property. Ownership may be proven by actual possession, dominion, control, title, and financial stake, among other things. However, the possession of bare legal title to the res may be insufficient absent other evidence of control or dominion over the property. The rationale for the rule that bare legal title may be insufficient is that appearances may be manipulated and deceptive, especially in the world of drug trafficking and other illegal operations. People engaged in illegal activities, especially when needing to conceal illegitimate funds and being aware of forfeiture statutes, often attempt to disguise their interests in property by not placing title in their own names. A search for standing in civil forfeiture cases looks beyond the formal title to determine whether the record owner is the "real" owner or merely a "strawman" set up either to conceal illegal dealings or to avoid forfeiture. (*U.S. v. One 1982 Porsche 928* (S.D.N.Y. 1990) 732 F.Supp. 447, 451; *U.S. v. Ford 250 Pickup* (8th Cir. 1992) 980 F.2d 1242, 1246.) One need not be a bona fide purchaser for value to challenge a forfeiture. However, one does need to be a true owner of an interest in the property. (*U.S. v. Vacant Land* (9th Cir. 1993) 15 F.3d 128, 130.)

A. <u>Possession</u>

Appellant contends:

> "The evidence proves that Marie Frausto, and William Frausto, *actually* possessed the Toyota 4-Runner. Marie Frausto had the Toyota 4-Runner most of the time. She drove the car daily. Respondents' only used the Toyota 4-Runner occasionally. They drove the car no more than typically three to four times a month. Antonia Cervantes said that Respondents borrowed the car only once a month if they had to go out of town.
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> "... Respondents actually possessed the Toyota 4-Runner on only the few occasions that they borrowed it. Possession of a thing may be jointly held.

> Yet, Respondents and Antonia Cervantes only borrowed the car. This fact dictates that whom they borrowed it from is the true owner. William and Marie Frausto actually possessed the car. Marie Frausto drove the car daily. William Frausto had possession of the Toyota 4-Runner on the date the police seized it. The police had seen him driving the Toyota 4-Runner on several occasions during the course of their investigation. Even when the police seized the Toyota 4-Runner Marie Frausto claimed she owned the Toyota 4-Runner. [¶] ... [¶]
>
> "The police seized the Toyota 4-Runner almost three and a half years after the Fraustos purchased it. Thus, Respondents actually possessed the Toyota 4-Runner only a negligible amount of times before the seizure. In the nearly 41 months from the date of the purchase until the date of the seizure, by Respondents' own testimony, they used the car three to four times a month. Their claim to possession rests upon the fact that they possessed the vehicle a fraction of the time compared to the amount of time the Fraustos possessed the Toyota 4-Runner.
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> "Finally, Marie Frausto possessed the property and treated it as if she was the owner of it at all times. She primarily used the Toyota 4-Runner during [the] time she had agreed to pay off the loan. Although, she allowed Respondents access to the car, and they borrowed it from time to time, they cannot by virtue of this fact, claim that they owned the Toyota 4-Runner. Marie Frausto intended to let Respondents borrow the Toyota 4-Runner anytime they wanted to, even after she paid off the loan. Her allowing respondents to use the Toyota 4-Runner while she was still paying it off, was nothing more than her allowing Respondents to borrow the Toyota 4-Runner. Frausto would have let Respondents borrow the Toyota 4-Runner regardless of who Frausto thought owned the Toyota 4-Runner. Obviously, Marie Frausto treated the property as if she owned it while she was paying the monthly payment on the loan."

The direct evidence of one witness entitled to full credit is sufficient for proof of any fact except where additional evidence is required by statute. (Evid. Code, § 411.) Respondent Juanita Cervantes was physically present at the time the vehicle was purchased. She personally signed her name to the contract of sale and also signed respondent Tony Cervantes's name to the contract with his permission. Respondent Juanita Cervantes was the individual who took possession of the vehicle from the dealership. The 4-Runner was registered with the California DMV in the names of

respondents. The respondents' names were on the insurance paperwork for the vehicle. Prior to the seizure, respondents paid the registration fees on the vehicle for two years. After the seizure, respondents paid for the vehicle registration and insurance. Marie testified respondents would use the 4-Runner "from three to four times a month" and said they would typically use it for "[a] few days on end." From these facts, the jury could reasonably conclude respondents had possession of the vehicle. Appellant disagrees, maintaining respondents had possession "a fraction of the time compared to the amount of time the Fraustos possessed the Toyota 4-Runner." The jury could reasonably conclude from Marie's phrase "[a] few days on end" that respondents had possession for something in excess of "a fraction of the time" and we may not reweigh the evidence on appeal.

B. <u>Dominion And Control</u>

Appellant contends:

> "… Respondents presented absolutely no evidence that they had any right to dispose of the vehicle. Respondents agreed that once the loan was paid off, Marie Frausto became the owner. When Antonia Cervantes took the mortgage on her house, the parties paid off the Toyota contract in full. Respondents never told Antonia Cervantes that if Marie failed to make the monthly payments after the re-finance, the vehicle would be their property. Although Respondents held the pink slip, they never truly possessed the vehicle itself, nor exhibited any indication that they might sell the vehicle. They exhibited no dominion over the property at all.
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> "... For all intents and purposes they had given all control to William and Marie Frausto. Marie Frausto was the primary user of the car and she drove it daily. She therefore controlled the Toyota 4-Runner.
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> "Most telling is the fact that Respondents exercised no dominion or control, or even attempted to exercise any dominion or control, when Marie Frausto failed to make the monthly payment in July 1998. They continued to let Marie Frausto have the property even though they asserted that the property would revert to them if Marie Frausto ever failed to make a payment."

For purposes of federal narcotics offenses, "dominion and control" can be established by proof of actual physical custody or constructive possession. Constructive possession exists if the person has sufficient dominion and control to give him or her the power of disposal. (*U.S. v. Sotelo-Rivera* (9th Cir. 1991) 931 F.2d 1317, 1319, disapproved on another point in *U.S. v. Nordby* (9th Cir. 2000) 225 F.3d 1053, 1059.) A person has constructive possession of an object if the evidence shows ownership, dominion, or control over the contraband itself or the premises or vehicle in which the contraband is concealed. When a defendant receives the keys to a vehicle or to a place where the contraband is located he or she has "dominion and control" over the contraband. (*U.S. v. Medrano* (9th Cir. 1993) 5 F.3d 1214, 1217-1218.)

Here, the respondents had a set of keys to the vehicle and the certificates of title and registration were in their names. Thus, a jury could reasonably infer they had dominion and control over the vehicle, even if they allowed Marie Frausto to be the primary operator of the vehicle.

C. <u>Title</u>

Appellant contends:

> "… Here, Marie Frausto picked out the vehicle. Respondents had nothing to do with choosing the Toyota 4-Runner. Marie Frausto made all the payments on the Toyota 4-Runner both before and after Toyota Motor Credit was paid in full.
>
> "... Marie Frausto is the beneficial owner of the Toyota 4-Runner. Respondents cannot have any interest in the vehicle. The facts in this case suggest Respondents would not have been involved in the purchase of the Toyota 4-Runner but for the fact William and Marie Frausto could not qualify for the initial loan from Toyota Motor Credit. Juanita Cervantes only became involved after Marie Frausto called her to co-sign.… Respondents purchased the Toyota 4-Runner for Frausto, who could not qualify for a car loan, as 'a matter of convenience.'
>
> "... There is no evidence in the record that Marie Frausto, upon completion of the payments on the loan, intended to make a gift of the Toyota 4-Runner to Respondents. To the contrary, the evidence in the record is that,

> once the loan was paid off, Marie would be the owner. Considering the amount of money Marie Frausto contributed towards the purchase of the Toyota 4-Runner and the money she provided on the loan payments, insurance, and registration (both before and after August[]1998), Respondents do not own the Toyota 4-Runner.… [¶] ... [¶]
>
> "The clear statement of the legislative [*sic*] is that the purpose behind vehicle registration is not that it is ultimate proof of ownership. Thus, the mere fact that Respondents have the Toyota 4-Runner registered to them does not prove they own the Toyota 4-Runner. This is even more apparent considering the fact they have never had a financial interest in the property. Further, after the payoff of the Toyota Motor Credit contract they were no longer in any way at any financial risk. Without any financial interest or financial risk in the Toyota 4-Runner, Respondents are truly no more than names on the registration."

Under California law, an "owner" is a person having all the incidents of ownership, including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle. (Veh. Code, § 460.) A "registered owner" is a person registered by the DMV as the owner of the vehicle. (Veh. Code, § 505.) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility under Vehicle Code section 16021 and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle. (Veh. Code, § 16020, subd. (a).) Every owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the motor vehicle by any person using or operating the same with the permission, express or implied of the owner. (Veh. Code, § 17150.)

In view of the financial responsibility created under Vehicle Code section 16020 and the liability imposed under Vehicle Code section 17150, the jury could reasonably conclude that respondents were far more than mere figureheads or nominal titleholders with respect to the 4-Runner.

D. Financial Stake

Appellant contends:

> "Respondents have absolutely no financial interest in the Toyota 4-Runner and have contributed almost nothing towards any obligation associated with the property. For all practical terms they paid nothing and they own nothing.
>
> "Marie paid for all of the obligations associated with the Toyota 4-Runner, including the monthly payment and the insurance payment. Juanita Cervantes paid for the DMV registration fee in 2001 (after the seizure). She may have paid the fees for two years. After July 1998, Marie paid the monthly payment to Juanita Cervantes who then gave the money to Antonia Cervantes.
>
> "Most importantly, Respondents admit that after Antonia Cervantes re-financed her house and paid off Toyota Motor Credit, neither Juanita nor Tony Cervantes were at any risk. Their credit was no longer on the line. Respondents tried to help their less fortunate daughter and soon to be son-in-law. They could not qualify to purchase the expensive Toyota 4-Runner. Arguably, Respondents may have lent their 'good credit' to enable William and Marie to buy the vehicle. They may have had some equitable interest in the Toyota 4-Runner while they remained liable on the Toyota Motor Credit contract. That contract was paid off, in full, a year after the purchase of the Toyota 4-Runner. After that date Respondents had nothing, were owed nothing, and had nothing at risk. Certainly, they were no more than nominal title-holders after August 1998 even if they were the registered owners and even if they possessed the pink slip. Further, Respondents cannot claim, because they are the registered owners of the Toyota 4-Runner, any financial interest in the Toyota 4-Runner because they are potentially liable for the remaining unsecured debt owed to Antonia Cervantes. Respondents presented no evidence to prove they were liable to Antonia Cervantes in any way."

Appellant essentially contends respondents are straw or nominal owners of the 4-Runner. A number of federal cases have held that possession of mere legal title by one who does not exercise dominion and control over the property is insufficient even to establish standing to challenge a forfeiture. These cases turn on a finding that the titleholder is a strawman holding nominal title as a subterfuge for a drug trafficker, rather than being a true owner of an interest in the property. (*U.S. v. Vacant Land, supra,* 15

F.3d at p. 130.) Here, once again, a jury could have reasonably concluded that respondents had dominion and control over the subject property in light of their status as holders of the legal title, their at will periodic use of the vehicle, as well as the financial responsibility created under Vehicle Code section 16020 and the liability imposed under Vehicle Code section 17150. Appellant repeatedly and vigorously insists that respondents' evidence was deficient and would require this court to resolve all conflicts in the evidence in its favor. Under California law, it is simply not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court's finding and decision, resolving every conflict in favor of the judgment. (*Howard v. Owens Corning, supra,* 72 Cal.App.4th at pp. 630-631.)

Appellant's numerous contentions must be rejected.

II.

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Appellant contends the trial court should have granted its motion for judgment notwithstanding the verdict because respondents are no more than unsecured creditors of the Fraustos.[6]

Appellant specifically argues:

> "... The jury found that Respondents did not have an unsecured interest in the Toyota 4-Runner. There was no evidence whatsoever to support this finding by the jury. If Respondents are not secured creditors they cannot challenge the forfeiture.
>
> "Mr. and Mrs. Cervantes' claim rests entirely on the so-called agreement made after Juanita Cervantes telephoned Tony Cervantes and discussed the

[6] See footnote 2, *ante*, page 4.

purchase of the Toyota 4-Runner with him. Tony Cervantes told Juanita Cervantes to let Marie Frausto know that if she failed to make the payments, the Toyota 4-Runner would be Mr. and Mrs. Cervantes' property. However, the agreement was never specifically communicated to Marie Frausto. According to Tony and Juanita Cervantes, the parties never actually had an agreement. Marie Frausto just 'knew' that if she didn't pay, then the Toyota 4-Runner would go to Respondents. Prior to signing the contract, the parties never had a written or verbal agreement. Further, after the date of the purchase, they never made any other agreements nor put anything in writing. After the purchase they never talked about the agreement again.

"Given the evidence the only possible interest Respondents can have had in the Toyota 4-Runner (if they had any) could only be an unsecured interest. If they are owed anything by anybody due to the seizure and forfeiture of the Toyota 4-Runner they are unsecured creditors.… [¶] ... [¶]

"[T]he evidence shows that Respondents at best have an unsecured debt owed to them from Mr. and Mrs. Frausto. [T]he so-called agreement was not even really an agreement. According to the evidence, it was something everybody apparently just 'understood' and 'knew[.]' Marie Frausto owed Respondents money for the monthly payments to Toyota. If she did not pay, then presumably Respondents would re-possess the vehicle. To protect themselves, Respondents never secured their so-called interest in any manner. Therefore, they must be considered ... an unsecured creditor. That is of course if Marie Frausto owes them anything at all after August 1998. Frausto was thereafter liable to Antonia Cervantes, if she was liable to anybody, after the pay off of the Toyota Motor Credit contract.

"Were Respondents owed anything after all? No. First, they did not really loan the Fraustos anything tangible. It may be argued that they loaned the Fraustos their good credit. Yet, despite the risk to them they never did anything to protect their credit. Also ... after the Toyota 4-Runner was paid off by the mortgage obtained by Antonia Cervantes, Respondents' credit was no longer at risk."

On November 19, 2002, appellant filed a motion for judgment notwithstanding the verdict in superior court. Appellant alleged there was no evidence at trial to support the jury's special verdict finding that respondents had a secured interest in the 4-Runner. Rather, appellant argued, respondents had at most an unsecured debt owed to them by the Fraustos. Thus, appellant contends the respondents could not challenge the forfeiture as a

matter of law. Respondents countered by arguing the governing statute was not limited to claimants who are secured creditors. They maintained they came within the statute because they had an ownership interest, i.e., the certificates of title and registration were in respondents' name.

Typically, if a defendant believes the plaintiff has not presented substantial evidence to establish a cause of action, the defendant may move for a nonsuit if the case has not been submitted to the jury, a directed verdict if the case is about to be submitted, or a judgment notwithstanding the verdict following an unfavorable jury verdict. While made at different times, the three motions are analytically the same and governed by the same rules. The function of these motions is to prevent the moving defendant from the necessity of undergoing any further exposure to legal liability when there is insufficient evidence for an adverse verdict. (*Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 750.)

Either a defendant or a plaintiff may move for judgment notwithstanding the verdict. (Code Civ. Proc., § 629.) A trial court must render judgment notwithstanding the verdict whenever a motion for a directed verdict for the aggrieved party should have been granted. A motion for judgment notwithstanding the verdict may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support. (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.) The trial court may not weigh the evidence or judge the credibility of the witnesses, as it may do on a motion for new trial. Rather, the trial court must accept the evidence tending to support the verdict as true, unless on its face it is inherently incredible. Such order may be granted only when, disregarding conflicting evidence and indulging in every legitimate inference which may be drawn from the nonmoving party's evidence, the result is no evidence sufficiently substantial to support the verdict. (*Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 703.) The scope of appellate review of a trial court's denial of a motion

for judgment notwithstanding the verdict is to determine whether there is any substantial evidence contradicted or uncontradicted, supporting the jury's conclusion and, where so found, to uphold the trial court's denial of the motion. (*Shapiro v. Prudential Property & Casualty Co.* (1997) 52 Cal.App.4th 722, 730.)

A claimant must establish a legally cognizable interest in the subject property to establish his or her right to challenge the government's action seeking forfeiture of that property. Unless a claimant can first establish standing, he or she has no right to put the government to its proof. Under both the federal and state systems, a claimant must show he or she has a recognizable legal or equitable interest in the seized property to establish standing. Standing has been recognized where the potential claimant has a bona fide ownership, possessory, or security interest in the property seized. (*People v. $28,500 United States Currency* (1996) 51 Cal.App.4th 447, 466-467.) Ownership may be proven by actual possession, dominion, control, title, and financial stake. However, the possession of bare legal title to the subject property may be insufficient absent other evidence of control or dominion over the property. (*U.S. v. One 1982 Porsche 928, supra,* 732 F.Supp. at p. 451; *United States v. One 1945 Douglas C-54, Etc.* (8th Cir. 1981) 647 F.2d 864, 866.)

In the instant case, appellant asserts: "The jury found that Respondents did not have an unsecured interest in the Toyota 4-Runner. There was no evidence whatsoever to support this finding by the jury. If Respondents are not secured creditors they cannot challenge the forfeiture." In framing this argument, appellant focuses on the presence or absence of a security interest and ignores all other indicia of a recognizable legal or equitable interest in the seized property. In its reply brief, appellant concedes the certificates of title and registration to the 4-Runner were in the names of the respondents.

As noted *ante*, under California law, an "owner" is a person having all the incidents of ownership, including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle. (Veh. Code, § 460.) A

"registered owner" is a person registered by the DMV as the owner of the vehicle. (Veh. Code, § 505.) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility under Vehicle Code section 16021 and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle. (Veh. Code, § 16020, subd. (a).) Every owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the motor vehicle by any person using or operating the same with the permission, express or implied of the owner. (Veh. Code, § 17150.) Under Health and Safety Code section 11488.6, subdivision (a), governing lien or security interest claims in forfeiture, a "valid ownership interest" includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract.

The jury returned a special verdict finding respondents had a valid ownership interest in the 4-Runner and that interest was a 100 percent interest. Respondents properly point out the following evidence to support the special verdict: (1) respondents' control and involvement with the financing and insurance of the vehicle; (2) their actual possession of the vehicle whenever they desired; (3) control of access to the vehicle via their possession of keys to the vehicle; (4) respondent Tony Cervantes's maintenance of the vehicle; (5) respondents' understanding and agreement with Marie Frausto that they would remain the owners; (6) Marie's testimony that respondent Juanita Cervantes signed the contract of sale and that respondents would use the vehicle "three to four times a month" for "[a] few days on end"; (7) Antonia Cervantes's statement that the vehicle "was Tony's"; and (8) the certificates of title and registration in the names of respondents.

Without citing authority in its reply brief on appeal, appellant denigrates the nature and quality of the foregoing evidence. As noted *ante*, our function is to determine whether there is any substantial evidence contradicted or uncontradicted, supporting the

jury's conclusion and, where so found, to uphold the trial court's denial of the motion. Appellant's attempt to undermine the evidence cited by respondents is nothing more than an effort to point out contradictions in the trial record and must be rejected. Appellant also argues: "given the evidence, as a matter of law, the jury should have found that Respondents ... had an unsecured interest …." Appellant implicitly argues the jury failed to follow the jury instructions given in the trial court. However, a review of the record on appeal does not reveal a copy or transcription of those instructions. As we have noted, a judgment or order of the lower court is presumed correct and error must be affirmatively shown. A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed. (*Gee v. American Realty & Construction, Inc., supra,* 99 Cal.App.4th at p. 1416.) To the extent appellant is claiming the jurors failed to follow the instructions, the contention must be rejected due to an inadequate record.

The jury's findings are supported by substantial evidence and the trial court did not err in denying appellant's motion for judgment notwithstanding the verdict.

III.

PROTECTION EXTENDED TO PARTIES

Appellant contends:

> "To provide protection to Respondents given the facts of this case, eviscerates the concept that property can be forfeited when it is in the hands of a straw or nominal owner. To create a successful subterfuge, all the drug dealer, or the real owner, would have to do is put the title in a third party's name, allow the third party to borrow the property from time to time, and then claim it was understood the property would be the third party's if the drug dealer, or the real owner, who pays for the property and all (or virtually all) of the obligations associated with the property, ever failed to make those payments. More to the point, as happened in this case, the true owner could actually fail to make the agreed upon payments, yet still keep the property, by having yet a fourth party secure a loan to pay off the property. Then when the property is seized, allow the third party to claim they owned the seized property all along. The ease with which drug dealers

could protect their assets would be greatly increased if straw owners were protected given these facts. Given this scenario, one must ask should the third party be afforded any greater protection than that extended to entities like banks and lenders who hold valid, perfected liens on vehicles, seized when used to facilitate drug trafficking? The answer ought to be no.

"[A]t best Respondents loaned their 'good credit' by signing the contract to help the Fraustos qualify for the Toyota 4-Runner. This is what they 'loaned' if they must be characterized as having loaned something. What they loaned though, and what they did, did not create a 'valid lien, mortgage, [or] security interest.' (California Health and Safety Code section 11488.6). [¶] ... [¶]

"Marie Frausto paid for all of the monthly payments on the vehicle. Therefore, Marie Frausto had the true equity in the Toyota 4-Runner. If Respondents 'own' the Toyota 4-Runner, then given Health and Safety Code section 11488.6, consideration must be given to the People for the value of the Marie Frausto's interest. Thus, the provisions of Health and Safety Code section 11488.6 ought to apply. If not, then any bank or other lending institution could make the same claim as Respondents and circumvent the provisions of Health and Safety Code section 11488.6. Clearly, it would be absurd to grant Respondents more protection than that afforded by the law to those parties with a 'valid lien, mortgage, [or] security interest.' (California Health and Safety Code section 11488.6)." (Fn. omitted.)

A judgment or order of a lower court is presumed to be correct on appeal and all intendments and presumptions are in favor of its correctness. The burden of demonstrating error rests on the appellant. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631-632.) Appellate review is limited to issues that have been adequately raised and supported in appellant's brief. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) When an appellant asserts a point but fails to support it with reasoned argument and citations to authority, a reviewing court will treat the point as waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) Conclusionary arguments based on the opinion of counsel are insufficient. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 978-979.)

Here, appellant speculates that respondents at most are subject to the provisions of Health and Safety Code section 11488.6, governing lien or security interest claims. However, appellant cites no case authority to bolster that summary contention. Generally speaking, asserted grounds for appeal that are unsupported by any citation to authority and that merely complain of error without presenting a coherent legal argument are deemed abandoned and unworthy of discussion. (*Wright v. City of Los Angeles* (2001) 93 Cal.App.4th 683, 689.) Assuming arguendo appellant's instant contention is a public policy argument as opposed to a mere assertion of error, we are reminded that courts do not sit as super-legislatures to determine the wisdom, desirability, or propriety of statutes enacted by the Legislature. (*Estate of Horman* (1971) 5 Cal.3d 62, 77.) Due respect for the political branches of our government requires us to interpret the laws in accordance with the expressed intention of the Legislature. A reviewing court has no power to rewrite the statute so as to make it conform to a presumed intention that is not expressed. In California, it is not for the courts to determine whether or not the policy of a statute is economically sound or beneficial. That is a matter for the Legislature. (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 577-578.)

Appellant's summary contention must be rejected.

DISPOSITION

The judgment is affirmed. Costs on appeal to respondents.

_____
HARRIS, J.

WE CONCUR:

_____
VARTABEDIAN, Acting P.J.

_____
LEVY, J.